IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET
SECOND APPEAL NO.189 OF 2003

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

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Shri S.G.Deshmukh for the Appellants
Shri R.V.More for Respondent No.1A to 1C, 2, 4 and 6.

CORAM: A.S.OKA, J.

DATED: AUGUST 18, 2004.

P.C.:

1. Heard Shri Deshmukh and Shri More appearing for the parties. The decree for removal of encroachment has been passed by the Trial Court against the Appellants. Shri Deshmukh for the Appellants submitted that the Courts below have not recorded a finding as regards the date on which the alleged encroachment was made. He submitted that the plaint as filed by the Respondents proceeds on the assumption that the Respondents-Plaintiffs were in possession on the date of institution of the suit. He submitted that the Appellate Court without reference to any evidence on

record has recorded a perverse finding that the Appellants have committed encroachment during the pendency of the suit. He submitted that the record of the consolidation proceedings will show that the Appellants were in possession of the alleged encroached portion even in the year 1958.

2. I have considered the submissions made by the learned Counsel for the Appellants. The defence of the Appellants was that they have perfected their title by adverse possession. The Trial Court after considering the evidence on record has recorded a finding that the Appellants have failed to establish that they have perfected their title by adverse possession. The Appellate Court has not made an elaborate discussion on the plea of adverse possession. The Appellate Court has however observed that plea of adverse possession is not available to the Appellants as the Appellants have not admitted that the original Plaintiffs are the owners of the suit land.

3. I find no perversity or illegality in the findings recorded by the Courts below on the issue of plea of adverse possession raised by the Appellants.

4. The claim of the Respondents - Plaintiffs for possession is on the basis of title. The period of limitation starts from the date on which the possession of the Appellants/Defendants became adverse. As the Appellants have failed to establish their plea of adverse possession, the suit of the Respondents-Plaintiffs cannot be defeated on the ground of bar of limitation.

5. No substantial question of law arises in this Second Appeal, same is dismissed with no order as to costs.

Judge.